115TH CONGRESS 2D SESSION

H. R. 5040

To authorize the President to control the export, reexport, and transfer of commodities, software, and technology to protect the national security, and to promote the foreign policy, of the United States, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 15, 2018

Mr. ROYCE of California (for himself and Mr. ENGEL) introduced the following bill; which was referred to the Committee on Foreign Affairs, and in addition to the Committee on Oversight and Government Reform, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

A BILL

To authorize the President to control the export, reexport, and transfer of commodities, software, and technology to protect the national security, and to promote the foreign policy, of the United States, and for other purposes.

1 Be it enacted by the Senate and House of Representa-
2 tives of the United States of America in Congress assembled,

3 SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

4 (a) Short Title.—This Act may be cited as the
5 “Export Control Reform Act of 2018”.

6
(b) Table of Contents.—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Definitions.

Title I—Authority and Administration of Controls

Sec. 101. Short title.
Sec. 102. Statement of policy.
Sec. 103. Authority of the President.
Sec. 104. Additional authorities.
Sec. 105. Administration of export controls.
Sec. 106. Control lists.
Sec. 107. Licensing.
Sec. 108. Compliance assistance.
Sec. 109. Requirements to identify and control emerging critical technologies in export control regulations.
Sec. 110. Penalties.
Sec. 111. Enforcement.
Sec. 112. Administrative procedure.
Sec. 113. Annual report to Congress.
Sec. 114. Repeal.
Sec. 115. Effect on other Acts.
Sec. 116. Transition provisions.

Title II—Anti-Boycott Act of 2018

Sec. 201. Short title.
Sec. 203. Foreign boycotts.
Sec. 204. Enforcement.

Title III—Sanctions Regarding Missile Proliferation and Chemical and Biological Weapons Proliferation

Sec. 301. Missile proliferation control violations.
Sec. 302. Chemical and biological weapons proliferation sanctions.

Sec. 2. Definitions.

In this Act:

(1) Controlled.—The term “controlled”, with respect to an item, means the export, reexport, or transfer of the item is controlled under title I.

(2) Dual-use.—The term “dual-use”, with respect to an item, means the item has civilian appli-
cations and military, terrorism, or weapons of mass
destruction-related applications.

(3) EXPORT.—The term “export”, with respect
to an item subject to controls under title I, in-
cludes—

(A) the shipment or transmission of the
item out of the United States, including the
sending or taking of the item out of the United
States, in any manner; and

(B) the release or transfer of technology or
source code relating to the item to a foreign
person in the United States.

(4) EXPORT ADMINISTRATION REGULATIONS.—
The term “Export Administration Regulations”
means—

(A) the Export Administration Regulations
as promulgated, maintained, and amended
under the authority of the International Emer-
gency Economic Powers Act and codified, as of
the date of the enactment of this Act, in sub-
chapter C of chapter VII of title 15, Code of
Federal Regulations; or

(B) regulations that are promulgated,
maintained, and amended under the authority
of title I on or after the date of the enactment of this Act.

(5) FOREIGN PERSON.—The term “foreign person” means a person that is not a United States person.

(6) ITEM.—The term “item” means a commodity, software, or technology.

(7) PERSON.—

(A) IN GENERAL.—The term “person” means—

(i) a natural person;

(ii) a corporation, business association, partnership, society, trust, financial institution, insurer, underwriter, guarantor, and any other business organization, any other nongovernmental entity, organization, or group, and any governmental entity operating as a business enterprise; and

(iii) any successor to any entity described in clause (ii).

(B) APPLICATION TO GOVERNMENTAL ENTITIES.—The term “person” does not include a government or governmental entity that is not operating as a business enterprise.
(8) REEXPORT.—The term “reexport”, with respect to an item subject to controls under title I, includes—

(A) the shipment or transmission of the item from a foreign country to another foreign country, including the sending or taking of the item from the foreign country to the other foreign country, in any manner; and

(B) the release or transfer of technology or source code relating to the item to a foreign person outside the United States.

(9) TECHNOLOGY.—The term “technology”—

(A) includes—

(i) information necessary for the development, production, use, operation, installation, maintenance, repair, overhaul or refurbishing of an item; and

(ii) information at whatever stage of its creation, such as foundational information and know-how, as further defined by regulations; and

(B) does not include published information, including prerecorded records, printed books, pamphlets, miscellaneous publications, or other information, that—
(i) arises during, or results from, funda-

damental research and is intended to be

published;

(ii) is released by instruction in a
catalog course or associated teaching lab-

oratory of an academic institution;

(iii) appears in patents or open (pub-
lished) patent publications available from
or at any patent office, unless covered by
an invention secrecy order;

(iv) is non-proprietary system descrip-
tions;

(v) is telemetry data; or

(vi) is any other category or type of
information, as determined by the Presi-
dent for purposes of national security or
foreign policy concerns.

(10) TRANSFER.—The term “transfer”, with
respect to an item subject to controls under title I,
means a change in the end-use or end user of the
item within the same foreign country.

(11) UNITED STATES.—The term “United
States” means the several States, the District of Co-
lumbia, the Commonwealth of Puerto Rico, the Com-
monwealth of the Northern Mariana Islands, Amer-
ican Samoa, Guam, the United States Virgin Islands, and any other territory or possession of the United States.

(12) UNITED STATES PERSON.—The term “United States person” means—

(A) any individual who is a citizen or national of the United States or who is an individual described in subparagraph (B) of section 274B(a)(3) of the Immigration and Nationality Act (8 U.S.C. 1324b(a)(3)); and

(B) a corporation or other legal entity which is organized under the laws of the United States, any State or territory thereof, or the District of Columbia, if natural persons described in subparagraph (A) own, directly or indirectly, more than 50 percent of the outstanding capital stock or other beneficial interest in such legal entity.

(13) WEAPONS OF MASS DESTRUCTION.—The term “weapons of mass destruction” means nuclear, radiological, chemical, and biological weapons and delivery systems for such weapons.
TITLE I—AUTHORITY AND
ADMINISTRATION OF CONTROLS

SEC. 101. SHORT TITLE.

This title may be cited as the “Export Controls Act of 2018”.

SEC. 102. STATEMENT OF POLICY.

The following is the policy of the United States:

(1) The national security and foreign policy of the United States require that the export, reexport, and transfer of items, and specific activities of United States persons, wherever located, be controlled for the following purposes:

(A) To control the access to items for use in—

(i) the proliferation of weapons of mass destruction or of conventional weapons;

(ii) the acquisition of destabilizing numbers or types of conventional weapons;

(iii) acts of terrorism;

(iv) military programs that could pose a threat to the security of the United States or its allies; or
(v) activities undertaken specifically to cause significant interference with or disruption of critical infrastructure.

(B) To preserve the qualitative military superiority of the United States.

(C) To strengthen the United States industrial base.

(D) To carry out the foreign policy of the United States, including the protection of human rights and the promotion of democracy.

(E) To carry out obligations and commitments under international agreements and arrangements, including multilateral export control regimes.

(F) To facilitate military interoperability between the United States and its North Atlantic Treaty Organization (NATO) and other close allies.

(G) To ensure national security controls are tailored to focus on those core technologies and other items that are capable of being used to pose a serious national security threat to the United States.

(2) The national security of the United States requires that the United States maintain its leader-
ship in the science, technology, engineering, and manufacturing sectors. Such leadership requires that United States persons are competitive in global markets. The impact of the implementation of this title on such leadership and competitiveness must be evaluated on an ongoing basis and applied in imposing controls under sections 103 and 104 to avoid negatively affecting such leadership.

(3) The national security and foreign policy of the United States require that the United States participate in multilateral organizations and agreements regarding export controls on items that are consistent with the policy of the United States, and take all the necessary steps to secure the adoption and consistent enforcement, by the governments of such countries, of export controls on items that are consistent with such policy.

(4) Export controls should be fully coordinated with the multilateral export control regimes. Export controls that are multilateral are most effective, and should be tailored to focus on those core technologies and other items that are capable of being used to pose a serious national security threat to the United States and its allies.
(5) Export controls applied unilaterally to items widely available from foreign sources generally are less effective in preventing end-users from acquiring those items.

(6) The effective administration of export controls requires a clear understanding both inside and outside the United States Government of which technologies and other items are controlled and an efficient process should be created to update the controls, such as by removing and adding technologies and other items.

(7) The export control system must ensure that it is transparent, predictable, and timely, has the flexibility to be adapted to address new threats in the future, and allows seamless access to and sharing of export control information among all relevant United States national security and foreign policy agencies.

(8) Implementation and enforcement of United States export controls require robust capabilities in monitoring, intelligence, and investigation, appropriate penalties for violations, and the ability to swiftly interdict unapproved transfers.

(9) Export controls should be balanced with United States counterterrorism, information secu-
rity, and cyber-security policies to ensure the ability to export, reexport, and transfer technology and other items in support of counterterrorism, critical infrastructure, and other homeland security priorities, while effectively preventing malicious cyber terrorists from obtaining items that threaten the United States and its interests, including the protection of and safety of United States citizens abroad.

(10) Export controls complement and are a critical element of the national security policies underlying the laws and regulations governing foreign direct investment in the United States, including controlling the transfer of critical technologies to certain foreign persons. Thus, the President, in close coordination with the Department of Commerce, the Department of Defense, the Department of State, the Department of Energy, and other agencies responsible for export controls, should have a regular and robust process to identify the emerging and other types of critical technologies of concern, as defined in United States foreign direct investment laws, and regulate their release to foreign persons as warranted regardless of the nature of the underlying transaction. Such identification efforts should draw upon the resources and expertise of all relevant
parts of the United States Government, industry, and academia. These efforts should be in addition to traditional efforts to modernize and update the lists of controlled items under the multilateral export control regimes.

(11) The authority under this title may be exercised only in furtherance of all of the objectives set forth in paragraphs (1) through (10).

SEC. 103. AUTHORITY OF THE PRESIDENT.

(a) AUTHORITY.—In order to carry out the policy set forth in paragraphs (1) through (10) of section 102, the President shall control—

(1) the export, reexport, and transfer of items, whether by United States persons, wherever located, or by foreign persons, wherever located; and

(2) the activities of United States persons, wherever located, relating to specific—

(A) nuclear explosive devices;

(B) missiles;

(C) chemical or biological weapons;

(D) whole plants for chemical weapons precursors;

(E) foreign maritime nuclear projects; and

(F) foreign intelligence services.
(b) REQUIREMENTS.—In exercising authority under this title, the President shall impose controls to achieve the following objectives:

1. To regulate the export, reexport, and transfer of items described in subsection (a)(1) of United States persons, wherever located, or foreign persons, wherever located.

2. To regulate the activities described in subsection (a)(2) of United States persons, wherever located.

3. To secure the cooperation of other governments and multilateral organizations to impose control systems that are consistent, to the extent possible, with the controls imposed under subsection (a).

4. To maintain the leadership of the United States in science, engineering, technology research and development, and manufacturing.

5. To enhance the viability of commercial firms, academic institutions, and research establishments, and maintain the skilled workforce of such firms, institutions, and establishments, that are necessary to preserving the leadership of the United States described in paragraph (4).
(6) To strengthen the United States industrial base, both with respect to current and future defense requirements.

(7) To enforce the controls through means such as regulations, requirements for compliance, lists of controlled items, lists of foreign persons who threaten the national security or foreign policy of the United States, and guidance in a form that facilitates compliance by United States persons and foreign persons, in particular academic institutions, scientific and research establishments, and small- and medium-sized businesses.

SEC. 104. ADDITIONAL AUTHORITIES.

(a) IN GENERAL.—In carrying out this title, the President shall—

(1) establish and maintain lists published by the Secretary of Commerce of items that are controlled under this title;

(2) establish and maintain lists published by the Secretary of Commerce of foreign persons and end-uses that are determined to be a threat to the national security and foreign policy of the United States pursuant to the policy set forth in section 102(1)(A) and to whom exports, reexports, and transfers of items are controlled;
(3) prohibit unauthorized exports, reexports, and transfers of controlled items;

(4) restrict exports, reexports, and transfers of any controlled items to any foreign person or end-use listed under paragraph (2);

(5) require licenses or other authorizations, as appropriate, for exports, reexports, and transfers of controlled items, including imposing conditions or restrictions on United States persons and foreign persons with respect to such licenses or other authorizations;

(6) establish a process by which the Secretary of Commerce or a license applicant requests an assessment that a foreign item is comparable in quality to an item controlled under this title, and is available in sufficient quantities to render the United States export control of that item or the denial of a license ineffective;

(7) require measures for compliance with the export controls established under this title;

(8) require and obtain such information from United States persons and foreign persons as is necessary to carry out this title;
(9) require, as appropriate, advance notice before an item is exported, reexported, or transferred, as an alternative to requiring a license;

(10) require, to the extent feasible, identification of items subject to controls under this title in order to facilitate the enforcement of such controls;

(11) inspect, search, detain, seize, or impose temporary denial orders with respect to items, in any form, that are subject to controls under this title, or conveyances on which it is believed that there are items that have been, are being, or are about to be exported, reexported, or transferred in violation of this title;

(12) monitor shipments, or other means of transfer;

(13) keep the public fully apprised of changes in policy, regulations, and procedures established under this title;

(14) appoint technical advisory committees in accordance with the Federal Advisory Committee Act;

(15) create, as warranted, exceptions to licensing requirements in order to further the objectives of this title; and
(16) undertake any other action as is necessary
to carry out this title and is not otherwise prohibited
by law.

(b) RELATIONSHIP TO IEEPA.—The authority under
this title may not be used to regulate or prohibit under
this title the export, reexport, or transfer of any item that
may not be regulated or prohibited under section 203(b)
of the International Emergency Economic Powers Act (50
U.S.C. 1702(b)).

(c) COUNTRIES SUPPORTING INTERNATIONAL TERRORISM.—

(1) LICENSE REQUIREMENT.—

(A) IN GENERAL.—A license shall be re-
quired for the export, reexport, or transfer of
items to a country if the Secretary of State has
made the following determinations:

(i) The government of such country
has repeatedly provided support for acts of
international terrorism.

(ii) The export, reexport, or transfer
of such items could make a significant con-
tribution to the military potential of such
country, including its military logistics ca-
pability, or could enhance the ability of
such country to support acts of international terrorism.

(B) Determination under other provisions of law.—A determination of the Secretary of State under section 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371), section 40 of the Arms Export Control Act (22 U.S.C. 2780), or any other provision of law that the government of a country described in subparagraph (A) has repeatedly provided support for acts of international terrorism shall be deemed to be a determination with respect to such government for purposes of clause (i) of subparagraph (A).

(2) Notification to Congress.—The Secretary of State and the Secretary of Commerce shall notify the Committee on Foreign Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs and the Committee on Foreign Relations of the Senate at least 30 days before issuing any license required by paragraph (1).

(3) Publication in Federal Register.—Each determination of the Secretary of State under paragraph (1)(A) shall be published in the Federal
Register, except that the Secretary of State may ex-
clude confidential information and trade secrets con-
tained in such determination.

(4) RESCISSION OF DETERMINATION.—A deter-
mination of the Secretary of State under paragraph
(1)(A) may not be rescinded unless the President
submits to the Speaker of the House of Representa-
tives, the chairman of the Committee on Foreign Af-
fairs, and the chairman of the Committee on Bank-
ing, Housing, and Urban Affairs and the chairman
of the Committee on Foreign Relations of the Sen-
ate—

(A) before the proposed rescission would
take effect, a report certifying that—

(i) there has been a fundamental
change in the leadership and policies of the
government of the country concerned;

(ii) that government is not supporting
acts of international terrorism; and

(iii) that government has provided as-
surances that it will not support acts of
international terrorism in the future; or

(B) at least 90 days before the proposed
rescission would take effect, a report justifying
the rescission and certifying that—
(i) the government concerned has not provided any support for acts international terrorism during the preceding 24-month period; and

(ii) the government concerned has provided assurances that it will not support acts of international terrorism in the future.

(5) Disapproval of rescission.—No rescission under paragraph (4)(B) of a determination under paragraph (1)(A) with respect to the government of a country may be made if Congress, within 90 days after receipt of a report under paragraph (4)(B), enacts a joint resolution described in subsection (f)(2) of section 40 of the Arms Export Control Act with respect to a rescission under subsection (f)(1) of such section with respect to the government of such country.

(6) Notification and briefing.—Not later than—

(A) ten days after initiating a review of the activities of the government of the country concerned within the 24-month period referred to in paragraph (4)(B)(i), the Secretary of State shall notify the Committee on Foreign Affairs
of the House of Representatives and the Com-
mittee on Foreign Relations of the Senate of
such initiation; and

(B) 20 days after the notification described
in paragraph (1), the Secretary of State shall
brief the congressional committees described in
paragraph (1) on the status of such review.

(7) Contents of Notification of Li-
cense.—The Secretary of State shall include in the
notification required by paragraph (2)—

(A) a detailed description of the items to
be offered, including a brief description of the
capabilities of any item for which a license to
export, reexport, or transfer the items is
sought;

(B) the reasons why the foreign country,
person, or entity to which the export, reexport,
or transfer is proposed to be made has re-
quested the items under the export, reexport, or
transfer, and a description of the manner in
which such country, person, or entity intends to
use such items;

(C) the reasons why the proposed export,
reexport, or transfer is in the national interest
of the United States;
(D) an analysis of the impact of the proposed export, reexport, or transfer on the military capabilities of the foreign country, person, or entity to which such transfer would be made;

(E) an analysis of the manner in which the proposed export, reexport, or transfer would affect the relative military strengths of countries in the region to which the items that are the subject of such export, reexport, or transfer would be delivered and whether other countries in the region have comparable kinds and amounts of items; and

(F) an analysis of the impact of the proposed export, reexport, or transfer on the relations of the United States with the countries in the region to which the items that are the subject of such export, reexport, or transfer would be delivered.

(d) Enhanced Proliferation Controls.—

(1) In general.—In furtherance of section 103(a) of this title, the President shall, except to the extent authorized by a statute or regulation administered by a Federal department or agency other than the Department of Commerce, require a United States person, wherever located, to apply for and re-
receive a license from the Department of Commerce for the export, reexport, or transfer of items described in paragraph (2) or for the performance of services relating to such items.

(2) ITEMS DESCRIBED.—The items described in this paragraph are—

(A) nuclear explosive devices;

(B) missiles;

(C) chemical or biological weapons;

(D) whole plants for chemical weapons precursors; and

(E) foreign maritime nuclear projects that would pose a risk to the national security or foreign policy of the United States.

(e) ADDITIONAL PROHIBITIONS.—The Secretary of Commerce may inform United States persons, either individually by specific notice or through amendment to any regulation or order issued under this title, that a license from the Bureau of Industry and Security of the Department of Commerce is required to engage in any activity if the activity involves the types of movement, service, or support described in subsection (d). The absence of any such notification does not excuse the United States person from compliance with the license requirements of sub-
section (d), or any regulation or order issued under this title.

(f) License Review Standards.—The Secretary of Commerce shall deny an application to engage in any activity that involves the types of movement, service, or support described in subsection (d) if the activity would make a material contribution to any of the items described in subsection (d)(2).

SEC. 105. Administration of Export Controls.

(a) In General.—The President shall delegate to the Secretary of Commerce, the Secretary of Defense, the Secretary of State and, as appropriate, the Director of National Intelligence and the heads of other appropriate Federal departments and agencies, the authority to carry out the purposes set forth in subsection (b).

(b) Purposes.—

(1) In General.—The purpose of the delegations of authority pursuant to subsection (a) are—

(A) to advise the President with respect to—

(i) identifying specific threats to the national security and foreign policy that the authority of this title may be used to address; and
• exercising the authority under this title to implement policies, regulations, procedures, and actions that are necessary to effectively counteract those threats;

(B) to review and approve—

(i) criteria for including items on, and removing such an item from, a list of controlled items established under this title;

(ii) an interagency procedure for compiling and amending any list described in clause (i);

(iii) criteria for including a person on a list of persons to whom exports, reexports, and transfers of items are prohibited or restricted under this title;

(iv) standards for compliance by persons subject to controls under this title; and

(v) policies and procedures for the end-use monitoring of exports, reexports, and transfers of items controlled under this title;

(C) to obtain independent evaluations, including from Inspectors General of the relevant departments or agencies, on a periodic basis on
the effectiveness of the implementation of this
title in carrying out the policy set forth in sec-
tion 102; and

(D) to benefit from the inherent equities,
experience, and capabilities of the Federal offi-
cials described in subsection (a), including—

(i) the views of the Department of De-
defense with respect to the national security
implications of a particular control or deci-
sion;

(ii) the views of the Department of
State with respect to the foreign policy im-
lications of a particular control or deci-
sion;

(iii) the views of the Department of
Energy with respect to the implications for
nuclear proliferation of a particular control
or decision; and

(iv) the views of the Department of
Commerce with respect to the administra-
tion of an efficient, coherent, reliable, en-
forceable, and predictable export control
system, and the resolution of competing
views or policy objectives described in sec-
section 102.
(2) Authority to seek information.—The Federal officials described in subsection (a) may, in carrying out the purposes set forth in paragraph (1), seek information and advice from experts who are not officers or employees of the Federal Government.

(3) Transmittal and implementation of evaluations.—The results of the independent evaluations conducted pursuant to paragraph (1)(D) shall be transmitted to the President and the Congress, in classified form if necessary. Subject to the delegation of authority by the President, the Federal officials described in subsection (a) shall determine, direct, and ensure that improvements recommended in the evaluations are implemented.

SEC. 106. CONTROL LISTS.

The President shall, pursuant to the delegation of authority in section 105, ensure that—

(1) a process is established for regular interagency review of each list established under section 104(a)(1), that pursuant to such review the Secretary of Commerce regularly updates such lists to ensure that new items (including emerging critical technologies) are appropriately controlled, and that
the level of control of items on the lists are adjusted as conditions change;

(2) information and expertise is obtained from officers and employees from relevant Federal departments, agencies, and offices and persons outside the Federal Government who have technical expertise, with respect to the characteristics of the items considered for each list established under section 104(a)(1) and the effect of controlling the items on addressing the policy set forth in section 102;

(3) each list established under section 104(a)(1) appropriately identifies each entry that has been included by virtue of the participation of the United States in a multilateral regime, organization, or group the purpose of which is consistent with and supports the policy of the United States under this title relating to the control of exports, reexports, and transfers of items; and

(4) each list established under section 104(a)(1) is published by the Secretary of Commerce in a form that facilitates compliance with it and related requirements, particularly by small- and medium-sized businesses, and academic institutions.
SEC. 107. LICENSING.

(a) IN GENERAL.—The President shall, pursuant to the delegation of authority in section 105, establish a procedure for the Department of Commerce to license or otherwise authorize the export, reexport, and transfer of items controlled under this title in order to carry out the policy set forth in section 102 and the requirements set forth in section 103(b). The procedure shall ensure that—

(1) license applications, other requests for authorization, and related dispute resolution procedures are considered and decisions made with the participation of appropriate departments, agencies, and offices that have delegated functions under this title; and

(2) licensing decisions are made in an expeditious manner, with transparency to applicants on the status of license and other authorization processing and the reason for denying any license or request for authorization.

(b) SENSE OF CONGRESS.—It is the sense of Congress that the President should make best efforts to ensure that an accurate, consistent, and timely evaluation and processing of licenses or other requests for authorization to export, reexport, or transfer items controlled under this title is accomplished within 30 days from the date of such license request.
(c) Fees.—No fee may be charged in connection with
the submission, processing, or consideration of any appli-
cation for a license or other authorization or other request
made in connection with any regulation in effect under
the authority of this title.

SEC. 108. COMPLIANCE ASSISTANCE.

(a) System for Seeking Assistance.—The Presi-
dent may establish a system to provide United States per-
sons with assistance in complying with this title, which
may include a mechanism for providing information, in
classified form as appropriate, who are potential cus-
tomers, suppliers, or business partners with respect to
items controlled under this title, in order to further ensure
the prevention of the export, reexport, or transfer of items
that may pose a threat to the national security or foreign
policy of the United States.

(b) Security Clearances.—In order to carry out
subsection (a), the President may issue appropriate secu-
ritv clearances to persons described in that subsection who
are responsible for complying with this title.

(c) Assistance for Certain Businesses.—

(1) In General.—Not later than 120 days
after the date of the enactment of this Act, the
President shall develop and submit to Congress a
plan to assist small- and medium-sized United
States in export licensing and other processes under this title.

(2) CONTENTS.—The plan shall include, among other things, arrangements for the Department of Commerce to provide counseling to businesses described in paragraph (1) on filing applications and identifying items controlled under this title, as well as proposals for seminars and conferences to educate such businesses on export controls, licensing procedures, and related obligations.

SEC. 109. REQUIREMENTS TO IDENTIFY AND CONTROL EMERGING CRITICAL TECHNOLOGIES IN EXPORT CONTROL REGULATIONS.

(a) IN GENERAL.—The President shall, pursuant to the delegation of authority in section 105, establish and, in coordination with the Department of Commerce, the Department of Defense, the Department of State, the Department of Energy, and other departments determined to be necessary, lead a regular, ongoing interagency process to identify emerging critical technologies that are not identified in any list of items controlled for export under United States law or regulations, but that nonetheless could be essential for maintaining or increasing the technological advantage of the United States over countries that pose a significant threat to the national security of
the United States with respect to national defense, intel-
ligence, or other areas of national security, or gaining such
an advantage over such countries in areas where such an
advantage may not currently exist.

(b) REQUIREMENTS.—The interagency process re-
quired under subsection (a) shall—

(1) draw upon the expertise, resources, and eq-
uities of all relevant United States Government
agencies, industries, and academic institutions to
identify and describe such emerging critical tech-
nologies;

(2) require the relevant export control authority
to publish proposed regulations for public comment
that would control heretofore unlisted emerging crit-
ical technologies identified pursuant to subsection
(a) and control the release of each such technology
to destinations, end uses, or end users as determined
by the President;

(3) require the Secretary of Commerce, the Sec-
retary of State, and the Secretary of Defense to pro-
pose to the relevant multilateral export control re-
gimes in the following year that such emerging crit-
ical technologies be added to the list of technologies
controlled by such regimes;
(4) determine whether national security concerns warrant continued unilateral export controls over technologies identified pursuant to subsection (a) if the relevant multilateral export control regime does not agree to list such technologies on its control list within three years; and

(5) require the agencies responsible for administering the export controls identified in subsection (a) to remove or revise, as appropriate, existing controls determined to warrant removal or revision as a result of insight or information obtained during efforts undertaken to comply with the requirements of this section.

SEC. 110. PENALTIES.

(a) UNLAWFUL ACTS.—

(1) IN GENERAL.—It shall be unlawful for a person to violate, attempt to violate, conspire to violate, or cause a violation of this title or of any regulation, order, license, or other authorization issued under this title, including any of the unlawful acts described in paragraph (2).

(2) SPECIFIC UNLAWFUL ACTS.—The unlawful acts described in this paragraph are the following:

(A) No person may engage in any conduct prohibited by or contrary to, or refrain from en-
gaging in any conduct required by this title, the Export Administration Regulations, or any order, license or authorization issued thereunder.

(B) No person may cause or aid, abet, counsel, command, induce, procure, or approve the doing of any act prohibited, or the omission of any act required by this title, the Export Administration Regulations, or any order, license or authorization issued thereunder.

(C) No person may solicit or attempt a violation of this Act, the Export Administration Regulations, or any order, license or authorization issued thereunder.

(D) No person may conspire or act in concert with one or more other persons in any manner or for any purpose to bring about or to do any act that constitutes a violation of this title, the Export Administration Regulations, or any order, license or authorization issued thereunder.

(E) No person may order, buy, remove, conceal, store, use, sell, loan, dispose of, transfer, transport, finance, forward, or otherwise service, in whole or in part, any item exported
or to be exported from the United States, or
that is otherwise subject to the Export Admin-
istration Regulations, with knowledge that a
violation of this title, the Export Administration
Regulations, or any order, license or authoriza-
tion issued thereunder, has occurred, is about
to occur, or is intended to occur in connection
with the item unless valid authorization is ob-
tained therefor.

(F) No person may make any false or mis-
leading representation, statement, or certifi-
cation, or falsify or conceal any material fact,
either directly to the Department of Commerce,
or an official of any other United States agen-
cy, or indirectly through any other person—

(i) in the course of an investigation or
other action subject to the Export Admin-
istration Regulations;

(ii) in connection with the prepara-
tion, submission, issuance, use, or mainte-
nance of any export control document or
any report filed or required to be filed pur-
suant to the Export Administration Regu-
lations; or
(iii) for the purpose of or in connection with effecting any export, reexport, or transfer of an item subject to the Export Administration Regulations or a service or other activity of a United States person described in section 104.

(G) No person may engage in any transaction or take any other action with intent to evade the provisions of this title, the Export Administration Regulations, or any order, license, or authorization issued thereunder.

(H) No person may fail or refuse to comply with any reporting or recordkeeping requirements of the Export Administration Regulations or of any order, license, or authorization issued thereunder.

(I) Except as specifically authorized in the Export Administration Regulations or in writing by the Department of Commerce, no person may alter any license, authorization, export control document, or order issued under the Export Administration Regulations.

(J) No person may take any action that is prohibited by a denial order issued by the Department of Commerce to prevent imminent
violations of this title, the Export Administra-

tion Regulations, or any order, license or au-

thorization issued thereunder.

(3) ADDITIONAL REQUIREMENTS.—For pur-

poses of subparagraph (G), any representation,

statement, or certification made by any person shall

be deemed to be continuing in effect. Each person

who has made a representation, statement, or certifi-
cation to the Department of Commerce relating to

any order, license, or other authorization issued

under this title shall notify the Department of Com-

merce, in writing, of any change of any material fact

or intention from that previously represented, stated,
or certified, immediately upon receipt of any infor-
mation that would lead a reasonably prudent person
to know that a change of material fact or intention
had occurred or may occur in the future.

(b) CRIMINAL PENALTY.—

(1) KNOWING VIOLATIONS.—Except as provided

in paragraph (2), a person who knowingly violates or

conspires or attempts to violate subsection (a) shall

be fined not more than 5 times the amount or value

of the exports, reexports, or transfers involved, or

$500,000, whichever is greater, and, in the case of
an individual, imprisoned not more than 5 years, or both.

(2) WILLFUL VIOLATIONS.—A person who willfully violates or conspires to or attempts to violate any provision of subsection (a) shall be fined not more than 5 times the amount or value of the exports, reexports, or transfers involved, or $1,000,000, whichever is greater, and, in the case of an individual, shall be fined not more than $250,000, or imprisoned not more than 10 years, or both.

(c) CIVIL PENALTIES.—

(1) AUTHORITY.—The President may impose the following civil penalties on a person for each violation by that person of this title or any regulation, order, or license issued under this title, for each violation:

(A) A fine of not more than $250,000 or an amount that is twice the value of the transaction that is the basis of the violation with respect to which the penalty is imposed, whichever is greater.

(B) Revocation of a license issued under this title to the person.
(C) A prohibition on the person’s ability to export, reexport, or transfer any items, whether or not subject to controls under this title.

(2) PROCEDURES.—Any civil penalty under this subsection may be imposed only after notice and opportunity for an agency hearing on the record in accordance with sections 554 through 557 of title 5, United States Code.

(3) STANDARDS FOR LEVELS OF CIVIL PENALTY.—The President may by regulation provide standards for establishing levels of civil penalty under this subsection based upon factors such as the seriousness of the violation, the culpability of the violator, and such mitigating factors as the violator’s record of cooperation with the Government in disclosing the violation.

(d) CRIMINAL FORFEITURE OF PROPERTY INTEREST AND PROCEEDS.—

(1) FORFEITURE.—Any person who is convicted under subsection (b) of a violation of a control imposed under section 103 (or any regulation, order, or license issued with respect to such control) shall, in addition to any other penalty, forfeit to the United States—
(A) any of that person’s interest in, security of, claim against, or property or contractual rights of any kind in the tangible items that were the subject of the violation;

(B) any of that person’s interest in, security of, claim against, or property or contractual rights of any kind in tangible property that was used in the violation; and

(C) any of that person’s property constituting, or derived from, any proceeds obtained directly or indirectly as a result of the violation.

(2) PROCEDURES.—The procedures in any forfeiture under this subsection, and the duties and authority of the courts of the United States and the Attorney General with respect to any forfeiture action under this subsection or with respect to any property that may be subject to forfeiture under this subsection, shall be governed by the provisions of section 1963 of title 18, United States Code.

(e) PRIOR CONVICTIONS.—

(1) LICENSE BAR.—

(A) IN GENERAL.—The President may—

(i) deny the eligibility of any person convicted of a criminal violation described in subparagraph (B) to export, reexport, or
transfer outside the United States any
item, whether or not subject to controls
under this title, for a period of up to 10
years beginning on the date of the convic-
tion; and

(ii) revoke any license or other author-
ization to export, reexport, or transfer
items that was issued under this title and
in which such person has an interest at the
time of the conviction.

(B) VIOLATIONS.—The violations referred
to in subparagraph (A) are any criminal viola-
tions of, or criminal attempt or conspiracy to
violate—

(i) this title (or any regulation, li-
cense, or order issued under this title);

(ii) any regulation, license, or order
issued under the International Emergency
Economic Powers Act;

(iii) section 793, 794, or 798 of title
18, United States Code;

(iv) section 4(b) of the Internal Secu-
rity Act of 1950 (50 U.S.C. 783(b)); or

(v) section 38 of the Arms Export
Control Act (22 U.S.C. 2778).
(2) Application to other parties.—The President may exercise the authority under paragraph (1) with respect to any person related, through affiliation, ownership, control, or position of responsibility, to any person convicted of any violation of law set forth in paragraph (1), upon a showing of such relationship with the convicted party, and subject to the procedures set forth in subsection (e)(2).

(f) Other authorities.—Nothing in subsection (c), (d), or (e) limits—

(1) the availability of other administrative or judicial remedies with respect to violations of this title, or any regulation, order, license or other authorization issued under this title;

(2) the authority to compromise and settle administrative proceedings brought with respect to violations of this title, or any regulation, order, license, or other authorization issued under this title; or

(3) the authority to compromise, remit or mitigate seizures and forfeitures pursuant to section 1(b) of title VI of the Act of June 15, 1917 (22 U.S.C. 401(b)).
SEC. 111. ENFORCEMENT.

(a) AUTHORITIES.—In order to enforce this title, the President may—

(1) issue regulations, orders, and guidelines;

(2) require, inspect, and obtain books, records, and any other information from any person subject to the provisions of this title;

(3) administer oaths or affirmations and by subpoena require any person to appear and testify or to appear and produce books, records, and other writings, or both;

(4) conduct investigations (including undercover) in the United States and in other countries, including intercepting any wire, oral, and electronic communications, conducting electronic surveillance, using pen registers and trap and trace devices, and carrying out acquisitions, to the extent authorized under chapters 119, 121, and 206 of title 18, United States Code, and other applicable laws of the United States;

(5) inspect, search, detain, seize, or issue temporary denial orders with respect to items, in any form, that are subject to controls under this title, or conveyances on which it is believed that there are items that have been, are being, or are about to be exported, reexported, or transferred in violation of
this title, or any regulations, order, license, or other
authorization issued thereunder;

(6) conduct prelicense inspections and post-
shipment verifications; and

(7) execute warrants and make arrests.

(b) ENFORCEMENT OF SUBPOENAS.—In the case of
contumacy by, or refusal to obey a subpoena issued to,
any person under subsection (a)(3), a district court of the
United States, after notice to such person and a hearing,
shall have jurisdiction to issue an order requiring such
person to appear and give testimony or to appear and
produce books, records, and other writings, regardless of
format, that are the subject of the subpoena. Any failure
to obey such order of the court may be punished by such
court as a contempt thereof.

(e) BEST PRACTICE GUIDELINES.—

(1) IN GENERAL.—The President, in consulta-
tion with the Secretary of Commerce and other Fed-
eral officials described in section 105(a), should pub-
lish and update “best practices” guidelines to assist
persons in developing and implementing, on a vol-
untary basis, effective export control programs in
compliance with the regulations issued under this
title.
(2) Export compliance program.—The implementation by a person of an effective export compliance program and a high quality overall export compliance effort by a person should ordinarily be given weight as mitigating factors in a civil penalty action against the person under this title.

(d) Reference to enforcement.—For purposes of this section, a reference to the enforcement of, or a violation of, this title includes a reference to the enforcement or a violation of any regulation, order, license or other authorization issued pursuant to this title.

(e) Immunity.—A person shall not be excused from complying with any requirements under this section because of the person’s privilege against self-incrimination, but the immunity provisions of section 6002 of title 18, United States Code, shall apply with respect to any individual who specifically claims such privilege.

(f) Confidentiality of information.—

(1) Exemptions from disclosure.—

(A) In general.—Information obtained under this title may be withheld from disclosure only to the extent permitted by statute, except that information described in subparagraph (B) shall be withheld from public disclosure and shall not be subject to disclosure under section
552(b)(3) of title 5, United States Code, unless the release of such information is determined by the President to be in the national interest.

(B) INFORMATION DESCRIBED.—Information described in this subparagraph is information submitted or obtained in connection with an application for a license or other authorization to export, reexport, or transfer items, engage in other activities, a recordkeeping or reporting requirement, enforcement activity, or other operations under this title, including—

(i) the license application, license, or other authorization itself;

(ii) classification or advisory opinion requests, and the response thereto;

(iii) license determinations, and information pertaining thereto;

(iv) information or evidence obtained in the course of any investigation; and

(v) information obtained or furnished in connection with any international agreement, treaty, or other obligation.

(2) INFORMATION TO THE CONGRESS AND GAO.—
(A) IN GENERAL.—Nothing in this section shall be construed as authorizing the withholding of information from the Congress or from the Government Accountability Office.

(B) AVAILABILITY TO THE CONGRESS.—

   (i) IN GENERAL.—Any information obtained at any time under any provision of the Export Administration Act of 1979 (as in effect on the day before the date of the enactment of this Act and as continued in effect pursuant to the International Emergency Economic Powers Act), under the Export Administration Regulations, or under this title, including any report or license application required under any such provision, shall be made available to a committee or subcommittee of Congress of appropriate jurisdiction, upon the request of the chairman or ranking minority member of such committee or subcommittee.

   (ii) PROHIBITION ON FURTHER DISCLOSURE.—No such committee or subcommittee, or member thereof, may disclose any information made available under clause (i), that is submitted on a confiden-
tial basis unless the full committee determines that the withholding of that information is contrary to the national interest.

(C) AVAILABILITY TO GAO.—

(i) IN GENERAL.—Information described in clause (i) of subparagraph (B) shall be subject to the limitations contained in section 716 of title 31, United States Code.

(ii) PROHIBITION ON FURTHER DISCLOSURE.—An officer or employee of the Government Accountability Office may not disclose, except to the Congress in accordance with this paragraph, any such information that is submitted on a confidential basis or from which any individual can be identified.

(3) INFORMATION SHARING.—

(A) IN GENERAL.—Any Federal official described in section 105(a) who obtains information that is relevant to the enforcement of this title, including information pertaining to any investigation, shall furnish such information to each appropriate department, agency, or office with enforcement responsibilities under this sec-
tion to the extent consistent with the protection
of intelligence, counterintelligence, and law en-
forcement sources, methods, and activities.

(B) EXCEPTIONS.—The provisions of this
paragraph shall not apply to information sub-
ject to the restrictions set forth in section 9 of
title 13, United States Code, and return infor-
mation, as defined in subsection (b) of section
6103 of the Internal Revenue Code of 1986 (26
U.S.C. 6103(b)), may be disclosed only as au-
thorized by that section.

(C) EXCHANGE OF INFORMATION.—The
President shall ensure that the heads of depart-
ments, agencies, and offices with enforcement
authorities under this title, consistent with pro-
tection of law enforcement and its sources and
methods—

(i) exchange any licensing and en-
facement information with one another
that is necessary to facilitate enforcement
efforts under this section; and

(ii) consult on a regular basis with
one another and with the head of other de-
partments, agencies, and offices that ob-
tain information subject to this paragraph,
in order to facilitate the exchange of such information.

(D) INFORMATION SHARING WITH FEDERAL AGENCIES.—Licensing or enforcement information obtained under this title may be shared with heads of departments, agencies, and offices that do not have enforcement authorities under this title on a case-by-case basis at the discretion of the President. Such information may be shared only when the President makes a determination that the sharing of this information is in the national interest.

(g) REPORTING REQUIREMENTS.—In the administration of this section, reporting requirements shall be designed so as to reduce the cost of reporting, recordkeeping, and documentation to the extent consistent with effective enforcement and compilation of useful trade statistics. Reporting, recordkeeping, and documentation requirements shall be periodically reviewed and revised in the light of developments in the field of information technology.

(h) CIVIL FORFEITURE.—

(1) IN GENERAL.—Any tangible items seized under subsection (a) by designated officers or employees shall be subject to forfeiture to the United States in accordance with applicable law, except that
property seized shall be returned if the property owner is not found guilty of a civil or criminal violation under section 109.

(2) Procedures.—Any seizure or forfeiture under this subsection shall be carried out in accordance with the procedures set forth in section 981 of title 18, United States Code.

SEC. 112. ADMINISTRATIVE PROCEDURE.

(a) In general.—The functions exercised under this title shall be subject to sections 551, 553 through 559, and 701 through 706 of title 5, United States Code.

(b) Amendments to regulations.—The President shall notify in advance the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Foreign Affairs of the House of Representatives of any proposed amendments to the Export Administration Regulations with an explanation of the intent and rationale of such amendments.

SEC. 113. ANNUAL REPORT TO CONGRESS.

(a) In general.—The President shall submit to Congress, by December 31 of each year, a report on the implementation of this title during the preceding fiscal year. The report shall include an analysis of—

(1) the effect of controls imposed under this title on exports, reexports, and transfers of items in
addressing threats to the national security or foreign
policy of the United States, including a description
of licensing processing times;

(2) the impact of such controls on the scientific
and technological leadership of the United States;

(3) the consistency with such controls of export
controls imposed by other countries;

(4) efforts to provide exporters with compliance
assistance, including specific actions to assist small-
and medium-sized businesses;

(5) a summary of regulatory changes from the
prior fiscal year;

(6) a summary of export enforcement actions,
including of actions taken to implement end-use
monitoring of dual-use, military, and other items
subject to the Export Administration Regulations;

(7) a summary of approved license applications
to proscribed persons; and

(8) efforts undertaken within the previous year
to comply with the requirements of section 109, in-
cluding any “critical technologies” identified under
such section and how or whether such critical tech-
nologies were controlled for export.
(b) FORM.—The report required under subsection (a) shall be submitted in unclassified form, but may contain a classified annex.

SEC. 114. REPEAL.

(a) IN GENERAL.—The Export Administration Act of 1979 (50 U.S.C. App. 2401 et seq.) (as continued in effect pursuant to the International Emergency Economic Powers Act) is repealed.

(b) IMPLEMENTATION.—The President shall implement the amendment made by subsection (a) by exercising the authorities of the President under the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.).

SEC. 115. EFFECT ON OTHER ACTS.

(a) IN GENERAL.—Except as otherwise provided in this title, nothing contained in this title shall be construed to modify, repeal, supersede, or otherwise affect the provisions of any other laws authorizing control over exports, reexports, or transfers of any item, or activities of United States persons subject to the Export Administration Regulations.

(b) COORDINATION OF CONTROLS.—

(1) IN GENERAL.—The authority granted to the President under this title shall be exercised in such manner so as to achieve effective coordination with
all export control and sanctions authorities exercised
by Federal departments and agencies delegated with
authority under this title, particularly the Depart-
ment of State, the Department of the Treasury, and
the Department of Energy.

(2) SENSE OF CONGRESS.—It is the sense of
Congress that in order to achieve effective coordina-
tion described in paragraph (1), such Federal de-
partments and agencies—

(A) should continuously work to create en-
forceable regulations with respect to the export,
reexport, and transfer by United States and
foreign persons of commodities, software, tech-
tology, and services to various end uses and
end users for foreign policy and national secu-
riety reasons;

(B) should regularly work to reduce com-
plexity in the system, including complexity
caused merely by the existence of structural,
definitional, and other non-policy based dif-
fences between and among different export
control and sanctions systems; and

(C) should coordinate controls on items ex-
ported, reexported, or transferred in connection
with a foreign military sale under chapter 2 of
the Arms Export Control Act or a commercial
sale under section 38 of the Arms Export Con-
trol Act to reduce as much unnecessary admin-
istrative burden as possible that is a result of
differences between the exercise of those two
authorities.

(c) Nonproliferation Controls.—Nothing in
this title shall be construed to supersede the procedures
published by the President pursuant to section 309(c) of
the Nuclear Non-Proliferation Act of 1978.


(a) In General.—All delegations, rules, regulations,
orders, determinations, licenses, or other forms of admin-
istrative action that have been made, issued, conducted,
or allowed to become effective under the Export Adminis-
tration Act of 1979 (as in effect on the day before the
date of the enactment of this Act and as continued in ef-
fecct pursuant to the International Emergency Economic
Powers Act), or the Export Administration Regulations,
and are in effect as of the date of the enactment of this
Act, shall continue in effect according to their terms until
modified, superseded, set aside, or revoked under the au-
thority of this title.

(b) Administrative and Judicial Pro-
ceedings.—This title shall not affect any administrative
or judicial proceedings commenced, or any applications for
licenses made, under the Export Administration Act of
1979 (as in effect on the day before the date of the enact-
ment of this Act and as continued in effect pursuant to
the International Emergency Economic Powers Act), or
the Export Administration Regulations.

(c) Certain Determinations and References.—

(1) State sponsors of terrorism.—Any de-
termination that was made under section 6(j) of the
Export Administration Act of 1979 (as in effect on
the day before the date of the enactment of this Act
and as continued in effect pursuant to the Inter-
national Emergency Economic Powers Act) shall
continue in effect as if the determination had been
made under section 104(c) of this Act.

(2) Reference.—Any reference in any other
provision of law to a country the government of
which the Secretary of State has determined, for
purposes of section 6(j) of the Export Administra-
tion Act of 1979 (as in effect on the day before the
date of the enactment of this Act and as continued
in effect pursuant to the International Emergency
Economic Powers Act), is a government that has re-
peatedly provided support for acts of international
terrorism shall be deemed to refer to a country the
government of which the Secretary of State has determined, for purposes of section 104(c) of this Act, is a government that has repeatedly provided support for acts of international terrorism.

TITLE II—ANTI-BOYCOTT ACT OF 2018

SEC. 201. SHORT TITLE.

This Act may be cited as the “Anti-Boycott Act of 2018”.

SEC. 202. STATEMENT OF POLICY.

Congress declares it is the policy of the United States—

(1) to oppose restrictive trade practices or boycotts fostered or imposed by any foreign country, or requests to impose restrictive trade practices or boycotts by any foreign country, against other countries friendly to the United States or against any United States person;

(2) to encourage and, in specified cases, require United States persons engaged in the export of goods or technology or other information to refuse to take actions, including furnishing information or entering into or implementing agreements, which have the effect of furthering or supporting the restrictive trade practices or boycotts fostered or imposed by
any foreign country, or requests to impose restrictive
trade practices or boycotts by any foreign country
against a country friendly to the United States or
against any United States person; and

(3) to foster international cooperation and the
development of international rules and institutions
to assure reasonable access to world supplies.

SEC. 203. FOREIGN BOYCOTTS.

(a) Prohibitions and Exceptions.—

(1) Prohibitions.—For the purpose of imple-
menting the policies set forth in section 202, the
President shall issue regulations prohibiting any
United States person, with respect to that person’s
activities in the interstate or foreign commerce of
the United States, from taking or knowingly agree-
ing to take any of the following actions with intent
to comply with, further, or support any boycott fos-
tered or imposed by any foreign country, or request
to impose any boycott by any foreign country,
against a country which is friendly to the United
States and which is not itself the object of any form
of boycott pursuant to United States law or regula-
tion:

(A) Refusing, or requiring any other per-
son to refuse, to do business with or in the boy-
cotted country, with any business concern organized under the laws of the boycotted country, with any national or resident of the boycotted country, or with any other person, pursuant to an agreement with, a requirement of, or a request from or on behalf of the boycotting country. The mere absence of a business relationship with or in the boycotted country with any business concern organized under the laws of the boycotted country, with any national or resident of the boycotted country, or with any other person, does not indicate the existence of the intent required to establish a violation of regulations issued to carry out this subparagraph.

(B) Refusing, or requiring any other person to refuse, to employ or otherwise discriminating against any United States person on the basis of race, religion, sex, or national origin of that person or of any owner, officer, director, or employee of such person.

(C) Furnishing information with respect to the race, religion, sex, or national origin of any United States person or of any owner, officer, director, or employee of such person.
(D) Furnishing information, or requesting the furnishing of information, about whether any person has, has had, or proposes to have any business relationship (including a relationship by way of sale, purchase, legal or commercial representation, shipping or other transport, insurance, investment, or supply) with or in the boycotted country, with any business concern organized under the laws of the boycotted country, with any national or resident of the boycotted country, or with any other person which is known or believed to be restricted from having any business relationship with or in the boycotting country. Nothing in this subparagraph shall prohibit the furnishing of normal business information in a commercial context as defined by the Secretary.

(E) Furnishing information about whether any person is a member of, has made contributions to, or is otherwise associated with or involved in the activities of any charitable or fraternal organization which supports the boycotted country.

(F) Paying, honoring, confirming, or otherwise implementing a letter of credit which con-
tains any condition or requirement compliance with which is prohibited by regulations issued pursuant to this paragraph, and no United States person shall, as a result of the application of this paragraph, be obligated to pay or otherwise honor or implement such letter of credit.

(2) EXCEPTIONS.—Regulations issued pursuant to paragraph (1) shall provide exceptions for—

(A) complying or agreeing to comply with requirements—

(i) prohibiting the import of goods or services from the boycotted country or goods produced or services provided by any business concern organized under the laws of the boycotted country or by nationals or residents of the boycotted country; or

(ii) prohibiting the shipment of goods to the boycotting country on a carrier of the boycotted country, or by a route other than that prescribed by the boycotting country or the recipient of the shipment;

(B) complying or agreeing to comply with import and shipping document requirements with respect to the country of origin, the name
of the carrier and route of shipment, the name
of the supplier of the shipment or the name of
the provider of other services, except that no in-
formation knowingly furnished or conveyed in
response to such requirements may be stated in
negative, blacklisting, or similar exclusionary
terms, other than with respect to carriers or
route of shipment as may be permitted by such
regulations in order to comply with pre-
cautionary requirements protecting against war
risks and confiscation;

(C) complying or agreeing to comply in the
normal course of business with the unilateral
and specific selection by a boycotting country,
or national or resident thereof, of carriers, in-
surers, suppliers of services to be performed
within the boycotting country or specific goods
which, in the normal course of business, are
identifiable by source when imported into the
boycotting country;

(D) complying or agreeing to comply with
export requirements of the boycotting country
relating to shipments or transshipments of ex-
ports to the boycotted country, to any business
concern of or organized under the laws of the
boycotted country, or to any national or resident of the boycotted country;

(E) compliance by an individual or agreement by an individual to comply with the immigration or passport requirements of any country with respect to such individual or any member of such individual’s family or with requests for information regarding requirements of employment of such individual within the boycotting country; and

(F) compliance by a United States person resident in a foreign country or agreement by such person to comply with the laws of that country with respect to his activities exclusively therein, and such regulations may contain exceptions for such resident complying with the laws or regulations of that foreign country governing imports into such country of trademarked, trade named, or similarly specifically identifiable products, or components of products for his own use, including the performance of contractual services within that country, as may be defined by such regulations.
(3) Special rules.—Regulations issued pursuant to paragraphs (2)(C) and (2)(F) shall not provide exceptions from paragraphs (1)(B) and (1)(C).

(4) Rule of construction.—Nothing in this subsection may be construed to supersede or limit the operation of the antitrust or civil rights laws of the United States.

(5) Application.—This section shall apply to any transaction or activity undertaken, by or through a United States person or any other person, with intent to evade the provisions of this section as implemented by the regulations issued pursuant to this subsection, and such regulations shall expressly provide that the exceptions set forth in paragraph (2) shall not permit activities or agreements (expressed or implied by a course of conduct, including a pattern of responses) otherwise prohibited, which are not within the intent of such exceptions.

(b) Foreign Policy Controls.—

(1) In general.—In addition to the regulations issued pursuant to subsection (a), regulations issued under title I of this Act to carry out the policies set forth in section 102(1)(D) shall implement the policies set forth in this section.
(2) REQUIREMENTS.—Such regulations shall require that any United States person receiving a request for the furnishing of information, the entering into or implementing of agreements, or the taking of any other action referred to in subsection (a) shall report that fact to the Secretary, together with such other information concerning such request as the Secretary may require for such action as the Secretary considers appropriate for carrying out the policies of that section. Such person shall also report to the Secretary whether such person intends to comply and whether such person has complied with such request. Any report filed pursuant to this paragraph shall be made available promptly for public inspection and copying, except that information regarding the quantity, description, and value of any goods or technology to which such report relates may be kept confidential if the Secretary determines that disclosure thereof would place the United States person involved at a competitive disadvantage. The Secretary shall periodically transmit summaries of the information contained in such reports to the Secretary of State for such action as the Secretary of State, in consultation with the Secretary, considers
appropriate for carrying out the policies set forth in
section 202.

(c) PREEMPTION.—The provisions of this section and
the regulations issued pursuant thereto shall preempt any
law, rule, or regulation of any of the several States or the
District of Columbia, or any of the territories or posses-
sions of the United States, or of any governmental subdivi-
sion thereof, which law, rule, or regulation pertains to par-
ticipation in, compliance with, implementation of, or the
furnishing of information regarding restrictive trade prac-
tices or boycotts fostered or imposed by foreign countries,
or requests to impose restrictive trade practices or boy-
cotts by any foreign country, against other countries
friendly to the United States.

SEC. 204. ENFORCEMENT.

(a) CIVIL PENALTIES.—The President may impose
the following civil penalties on a person who violates sec-
tion 203 or any regulation issued under this title:

(1) A fine of not more than $250,000 or an
amount that is twice the amount of the transaction
that is the basis of the violation with respect to
which the penalty is imposed.

(2) Revocation of a license issued under title I
to the person.
(3) A prohibition on the person’s ability to export, reexport, or transfer any items, whether or not subject to controls under this title.

(b) PROCEDURES.—Any civil penalty under this section may be imposed only after notice and opportunity for an agency hearing on the record in accordance with sections 554 through 557 of title 5, United States Code, and shall be subject to judicial review in accordance with chapter 7 of such title.

(c) STANDARDS FOR LEVELS OF CIVIL PENALTY.—The President may by regulation provide standards for establishing levels of civil penalty under this section based upon factors such as the seriousness of the violation, the culpability of the violator, and the violator’s record of cooperation with the Government in disclosing the violation.

TITLE III—SANCTIONS REGARDING MISSILE PROLIFERATION AND CHEMICAL AND BIOLOGICAL WEAPONS PROLIFERATION

SEC. 301. MISSILE PROLIFERATION CONTROL VIOLATIONS.

(a) VIOLATIONS BY UNITED STATES PERSONS.—

(1) SANCTIONS.—

(A) SANCTIONABLE ACTIVITY.—The President shall impose the applicable sanctions de-
scribed in subparagraph (B) if the President
determines that a United States person know-
ingly—

(i) exports, reexports, or transfers of
any item on the MTCR Annex, in violation
of the provisions of section 38 (22 U.S.C.
2778) or chapter 7 of the Arms Export
Control Act, title I of this Act, or any reg-
ulations or orders issued under any such
provisions; or

(ii) conspires to or attempts to engage
in such export, reexport, or transfer.

(B) SANCTIONS.—The sanctions that apply
to a United States person under subparagraph
(A) are the following:

(i) If the item on the MTCR Annex
involved in the export, reexport, or transfer
is missile equipment or technology within
category II of the MTCR Annex, then the
President shall deny to such United States
person, for a period of 2 years, licenses for
the transfer of missile equipment or tech-
ology controlled under title I.

(ii) If the item on the MTCR Annex
involved in the export, reexport, or transfer
is missile equipment or technology within category I of the MTCR Annex, then the President shall deny to such United States person, for a period of not less than 2 years, all licenses for items the transfer of which is controlled under title I.

(2) DISCRETIONARY SANCTIONS.—In the case of any determination referred to in paragraph (1), the President may pursue any other appropriate penalties under section 109 of this Act.

(3) WAIVER.—The President may waive the imposition of sanctions under paragraph (1) on a person with respect to a product or service if the President certifies to the Congress that—

(A) the product or service is essential to the national security of the United States; and

(B) such person is a sole source supplier of the product or service, the product or service is not available from any alternative reliable supplier, and the need for the product or service cannot be met in a timely manner by improved manufacturing processes or technological developments.

(b) TRANSFERS OF MISSILE EQUIPMENT OR TECHNOLOGY BY FOREIGN PERSONS.—
(1) SANCTIONS.—

(A) SANCTIONABLE ACTIVITY.—Subject to paragraphs (3) through (7), the President shall impose the applicable sanctions under subparagraph (B) on a foreign person if the President—

(i) determines that a foreign person knowingly—

(I) exports, reexports, or transfers any MTCR equipment or technology that contributes to the design, development, or production of missiles in a country that is not an MTCR adherent and would be, if it were United States-origin equipment or technology, subject to the jurisdiction of the United States under title I;

(II) conspires to or attempts to engage in such export, reexport, or transfer; or

(III) facilitates such export, reexport, or transfer by any other person; or

or
(ii) has made a determination with respect to the foreign person under section 73(a) of the Arms Export Control Act.

(B) SANCTIONS.—The sanctions that apply to a foreign person under subparagraph (A) are the following:

(i) If the item involved in the export, reexport, or transfer is within category II of the MTCR Annex, then the President shall deny, for a period of 2 years, licenses for the transfer to such foreign person of missile equipment or technology the transfer of which is controlled under title I.

(ii) If the item involved in the export, reexport, or transfer is within category I of the MTCR Annex, then the President shall deny, for a period of not less than 2 years, licenses for the transfer to such foreign person of items the transfer of which is controlled under title I.

(2) INAPPLICABILITY WITH RESPECT TO MTCR ADHERENTS.—Paragraph (1) does not apply with respect to—

(A) any export, reexport, or transfer that is authorized by the laws of an MTCR adher-
ent, if such authorization is not obtained by
misrepresentation or fraud; or

(B) any export, reexport, or transfer of an
item to an end user in a country that is an
MTCR adherent.

(3) Effect of enforcement actions by
MTCR adherents.—Sanctions set forth in para-
graph (1) may not be imposed under this subsection
on a person with respect to acts described in such
paragraph or, if such sanctions are in effect against
a person on account of such acts, such sanctions
shall be terminated, if an MTCR adherent is taking
judicial or other enforcement action against that
person with respect to such acts, or that person has
been found by the government of an MTCR adher-
ent to be innocent of wrongdoing with respect to
such acts.

(4) Waiver and report to congress.—

(A) Waiver authority.—The President
may waive the application of paragraph (1) to
a foreign person if the President determines
that such waiver is essential to the national se-
curity of the United States.

(B) Notification and report to con-
gress.—In the event that the President decides
to apply the waiver described in subparagraph 
(A), the President shall so notify the appro-
priate congressional committees not less than 
20 working days before issuing the waiver. 
Such notification shall include a report fully ar-
ticulating the rationale and circumstances 
which led the President to apply the waiver.

(5) ADDITIONAL WAIVER.—The President may 
waive the imposition of sanctions under paragraph 
(1) on a person with respect to a product or service 
if the President certifies to the appropriate congres-
sional committees that—

(A) the product or service is essential to 
the national security of the United States; and 
(B) such person is a sole source supplier of 
the product or service, the product or service is 
not available from any alternative reliable sup-
plier, and the need for the product or service 
cannot be met in a timely manner by improved 
manufacturing processes or technological devel-
opments.

(6) EXCEPTIONS.—The President shall not 
apply the sanction under this subsection prohibiting 
the importation of the products of a foreign per-
son—
(A) in the case of procurement of defense articles or defense services—

(i) under existing contracts or subcontracts, including the exercise of options for production quantities to satisfy requirements essential to the national security of the United States;

(ii) if the President determines that the person to which the sanctions would be applied is a sole source supplier of the defense articles or defense services, that the defense articles or defense services are essential to the national security of the United States, and that alternative sources are not readily or reasonably available; or

(iii) if the President determines that such articles or services are essential to the national security of the United States under defense coproduction agreements or NATO Programs of Cooperation;

(B) to products or services provided under contracts entered into before the date on which the President publishes his intention to impose the sanctions; or

(C) to—
(i) spare parts;

(ii) component parts, but not finished products, essential to United States products or production;

(iii) routine services and maintenance of products, to the extent that alternative sources are not readily or reasonably available; or

(iv) information and technology essential to United States products or production.

(c) DEFINITIONS.—In this section:

(1) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term “appropriate congressional committees” means—

(A) the Committee on Foreign Affairs of the House of Representatives; and

(B) the Committee on Foreign Relations and the Committee on Banking, Housing, and Urban Affairs of the Senate.

(2) DEFENSE ARTICLES; DEFENSE SERVICES.—The terms “defense articles” and “defense services” mean those items on the United States Munitions List as defined in section 47(7) of the Arms Export Control Act (22 U.S.C. 2794 note).
(3) MISSILE.—The term “missile” means a category I system as defined in the MTCR Annex.

(4) MISSILE TECHNOLOGY CONTROL REGIME; MTCR.—The term “Missile Technology Control Regime” or “MTCR” means the policy statement, between the United States, the United Kingdom, the Federal Republic of Germany, France, Italy, Canada, and Japan, announced on April 16, 1987, to restrict sensitive missile-relevant transfers based on the MTCR Annex, and any amendments thereto.

(5) MTCR ADHERENT.—The term “MTCR adherent” means a country that participates in the MTCR or that, pursuant to an international understanding to which the United States is a party, controls MTCR equipment or technology in accordance with the criteria and standards set forth in the MTCR.

(6) MTCR ANNEX.—The term “MTCR Annex” means the Guidelines and Equipment and Technology Annex of the MTCR, and any amendments thereto.

(7) MISSILE EQUIPMENT OR TECHNOLOGY; MTCR EQUIPMENT OR TECHNOLOGY.—The terms “missile equipment or technology” and “MTCR
equipment or technology” mean those items listed in category I or category II of the MTCR Annex.

SEC. 302. CHEMICAL AND BIOLOGICAL WEAPONS PROLIFERATION SANCTIONS.

(a) IMPOSITION OF SANCTIONS.—

(1) DETERMINATION BY THE PRESIDENT.—Except as provided in subsection (b)(2), the President shall impose the sanction described in subsection (c) if the President determines that a foreign person has knowingly and materially contributed—

(A) through the export from the United States of any item that is subject to the jurisdiction of the United States under this title; or

(B) through the export from any other country of any item that would be, if they were United States goods or technology, subject to the jurisdiction of the United States under this title,

to the efforts by any foreign country, project, or entity described in paragraph (2) to use, develop, produce, stockpile, or otherwise acquire chemical or biological weapons.

(2) COUNTRIES, PROJECTS, OR ENTITIES RECEIVING ASSISTANCE.—Paragraph (1) applies in the case of—
(A) any foreign country that the President
determines has, at any time after January 1,
1980—

(i) used chemical or biological weap-
ons in violation of international law;

(ii) used lethal chemical or biological
weapons against its own nationals; or

(iii) made substantial preparations to
engage in the activities described in clause
(i) or (ii);

(B) any foreign country whose government
is determined for purposes of section 104(c) of
this Act to be a government that has repeatedly
provided support for acts of international ter-
rorism; or

(C) any other foreign country, project, or
entity designated by the President for purposes
of this section.

(3) Persons against which sanctions are
to be imposed.—A sanction shall be imposed pur-
suant to paragraph (1) on—

(A) the foreign person with respect to
which the President makes the determination
described in that paragraph;
(B) any successor entity to that foreign person; and

(C) any foreign person that is a parent, subsidiary, or affiliate of that foreign person if that parent, subsidiary, or affiliate knowingly assisted in the activities which were the basis of that determination.

(b) CONSULTATIONS WITH AND ACTIONS BY FOREIGN GOVERNMENT OF JURISDICTION.—

(1) CONSULTATIONS.—If the President makes the determinations described in subsection (a)(1) with respect to a foreign person, the Congress urges the President to initiate consultations immediately with the government with primary jurisdiction over that foreign person with respect to the imposition of a sanction pursuant to this section.

(2) ACTIONS BY GOVERNMENT OF JURISDICTION.—In order to pursue such consultations with that government, the President may delay imposition of a sanction pursuant to this section for a period of up to 90 days. Following such consultations, the President shall impose the sanction unless the President determines and certifies to the appropriate congressional committees that the Government has taken specific and effective actions, including appro-
appropriate penalties, to terminate the involvement of the foreign person in the activities described in subsection (a)(1). The President may delay imposition of the sanction for an additional period of up to 90 days if the President determines and certifies to the Congress that the government is in the process of taking the actions described in the preceding sentence.

(3) Report to Congress.—The President shall report to the appropriate congressional committees, not later than 90 days after making a determination under subsection (a)(1), on the status of consultations with the appropriate government under this subsection, and the basis for any determination under paragraph (2) of this subsection that such government has taken specific corrective actions.

(c) Sanction.—

(1) Description of Sanction.—The sanction to be imposed pursuant to subsection (a)(1) is, except as provided that the United States Government shall not procure, or enter into any contract for the procurement of, any goods or services from any person described in subsection (a)(3).
(2) EXCEPTIONS.—The President shall not be required to apply or maintain a sanction under this section—

(A) in the case of procurement of defense articles or defense services—

   (i) under existing contracts or sub-contracts, including the exercise of options for production quantities to satisfy United States operational military requirements;

   (ii) if the President determines that the person or other entity to which the sanctions would otherwise be applied is a sole source supplier of the defense articles or defense services, that the defense articles or defense services are essential, and that alternative sources are not readily or reasonably available; or

   (iii) if the President determines that such articles or services are essential to the national security under defense coproduction agreements;

(B) to products or services provided under contracts entered into before the date on which the President publishes his intention to impose sanctions;
(C) to—

(i) spare parts;

(ii) component parts, but not finished products, essential to United States products or production; or

(iii) routine servicing and maintenance of products, to the extent that alternative sources are not readily or reasonably available;

(D) to information and technology essential to United States products or production; or

(E) to medical or other humanitarian items.

(d) TERMINATION OF SANCTIONS.—A sanction imposed pursuant to this section shall apply for a period of at least 12 months following the imposition of one sanction and shall cease to apply thereafter only if the President determines and certifies to the appropriate congressional committees that reliable information indicates that the foreign person with respect to which the determination was made under subsection (a)(1) has ceased to aid or abet any foreign government, project, or entity in its efforts to acquire chemical or biological weapons capability as described in that subsection.

(e) WAIVER.—
(1) **Criterion for Waiver.**—The President may waive the application of any sanction imposed on any person pursuant to this section, after the end of the 12-month period beginning on the date on which that sanction was imposed on that person, if the President determines and certifies to the appropriate congressional committees that such waiver is important to the national security interests of the United States.

(2) **Notification of and Report to Congress.**—If the President decides to exercise the waiver authority provided in paragraph (1), the President shall so notify the appropriate congressional committees not less than 20 days before the waiver takes effect. Such notification shall include a report fully articulating the rationale and circumstances which led the President to exercise the waiver authority.

(f) **Definitions.**—In this section:

(1) **Appropriate Congressional Committees.**—The term “appropriate congressional committees” means—

(A) the Committee on Foreign Affairs of the House of Representatives; and
(B) the Committee on Foreign Relations
and the Committee on Banking, Housing, and
Urban Affairs of the Senate.

(2) DEFINITION OF "DEFENSE ARTICLES";
DEFENSE SERVICES.—
The terms “defense articles” and “defense services”
mean those items on the United States Munitions
List or are otherwise controlled under the Arms Ex-
port Control Act.